SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE (202) 424-7647

DOCKET FILE COPY ORIGINAL

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

June 23, 2000

VIA HAND DELIVERY

Magalie Roman Salas
Commission Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48
Comments of RCN Telecom Services, Inc.

Dear Secretary Salas:

On behalf of RCN Telecom Services, Inc. ("RCN"), enclosed please find an original and seven (7) copies of RCN's comments in the above-referenced dockets. Please date-stamp and return the enclosed extra copy.

Should you have any questions with respect to this matter, please do not hesitate to call Heather Thomas at (202) 295-8393.

Respectfully submitted,

Heather A. Thomas

Russell M. Blau
Heather A. Thomas

Counsel for RCN Telecom Services, Inc.

Enclosure

cc: Patrick McGuire (RCN)
Patrick J. Donovan, Esq.

338299.1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF
RCN TELECOM SERVICES, INC.

Russell M. Blau
Heather A. Thomas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for RCN Telecom Services, Inc.

Dated: June 23, 2000

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Commission should grant the Association for Local Telecommunications Services ("ALTS") petition and clarify, interpret, and modify its rules governing crucial aspects of loop provisioning by incumbent local exchange carriers (ILECs). Currently, competitive local exchange carriers (CLECs) experience numerous burdensome and unnecessary delays during the provisioning process. As a result, meaningful competition has not arrived, thereby preventing American consumers from experiencing new services and lower prices. As market entrants, CLECs invest substantial amounts of money and resources into starting their businesses. The slightest delays endured by CLECs during the time when they predicted they would be rolling out their services, obviously causes significant market harms.

For these reasons, RCN Telecom Services, Inc. ("RCN") supports the ALTS petition and urges the Commission to seize the opportunity to impose requirements on ILECs' provisioning of UNE loops. Specifically, the Commission should require ILECs to provision UNEs contemporaneous with provisioning collocation. Under the present conditions, collocation provisioning and UNE provisioning can take up to 10 months. If the Commission requires contemporaneous provisioning, this time period could significantly decrease, allowing CLECs to bring services and products to market much more rapidly.

Also, the Commission should establish rules governing the escalation of unresolved maintenance and repair problems. Specifically, the Commission should establish repair performance metrics and escalation procedures for resolution of trouble tickets. For instance, presently many ILECs close a trouble ticket without verifying resolution of the trouble with CLECs, and CLECs are thus forced to open a new trouble ticket. Instead, trouble tickets should

remain open until the ILEC notifies the CLEC that the trouble ticket has been resolved and allows the CLEC to confirm or deny resolution before closing the ticket.

Furthermore, RCN believes that the Commission should require timely provision of loops and loop information. In this regard, the Commission should adopt standards for each stage of loop provisioning. The Commission can look to its standards that it established in the context of consideration of regional Bell Operating Companies applications for Section 271 authority to provide in-region, interLATA service. These standards resulted from input from various sources: state public utility commissions, the United States Department of Justice, and commenters to the Section 271 proceeding. The Commission does not need to start from scratch, but can reevaluate various approaches proposed and formulate them into viable standards that give effect to the provisionoing of unbundled loops. Also, RCN suggests several standards in these comments, which the Commission can use as a starting point for its analysis. Through its proposals, however, RCN is not foreclosing any more stringent performance measures which the Commission may deem necessary to adopt based on intervals established in this proceeding. RNC suggests the following:

- **Pre-Ordering:** RCN suggests that the Commission adopt a general standard. RCN also suggests that the Commission adopt a standard for Application to Application Interface: parsed customer service records provided in parity plus 10 seconds. RCN also suggests standards regarding loop make-up information: (1) mechanized loop qualification – parity with retail plus 4 seconds; (2) manual loop qualification – 95% of requests completed within 72 hours.

- **Ordering:** RCN suggests that the Commission adopt a standard regarding order rejects: return of 95% of mechanized order confirmation and rejection notices within 2 hours of submission to BOC, and 95% of manually processed order confirmation and rejection notices under 10 lines within 24 hours of submission. RCN also suggests the Commission adopt a standard regarding jeopardy notices: timeliness of notice of jeopardy of service order request where miss is known in advance of due date – 100% within 48 hours before due date without facilities.

- **Provisioning:** RCN suggests that the Commission adopt standards for average completion intervals: (1) ILEC must provision 95% of orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops). RCN also suggest that the Commission adopt standards regarding hot cuts: 95% of orders of 10 loops or fewer to be completed within 1 hour.

Finally, RCN urges the Commission to establish federal penalties for ILEC noncompliance. In addition to the proposals set forth in the ALTS petition, RCN further proposes that penalties could consist of the waiver of some, or all, non-recurring charges related to the provisioning of the collocation space and UNEs. Furthermore, the FCC could mandate a reduction in rates that an ILEC charges CLECs for UNEs. Also, the Commission should make enforcement of contemporaneous provisioning a priority for the newly formed Enforcement Bureau. Adopting a policy of enforcing contemporaneous collocation and UNE provisioning will help ensure that ILECs are provisioning loops in a non-discriminatory, efficient manner. Alternatively, the Commission could permit states to enforce these penalties.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF
RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel and pursuant to the Commission's *Public Notice* (dated May 24, 2000), submits these Comments concerning the "Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning."[1] For the reasons stated below, the Commission should grant ALTS' petition and clarify, interpret, and modify its rules governing crucial aspects of loop provisioning by incumbent local exchange carriers (ILECs).

---

1 Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning (May 17, 2000) ("*ALTS Petition*").

I. INTRODUCTION

It has been just over four years since the passage of the Telecommunications Act of 1996 (1996 Act). Much of this time has been spent defining the parameters of, and pricing rules for, unbundled network elements (UNEs). These efforts, and local competition that they engendered, will be achieved if competitive local exchange carriers (CLECs) are able to procure loops in a timely and efficient manner. As an emerging facilities-based CLEC, RCN has a vital interest in the Commission's rules and policies governing loop provisioning by ILECs. Accordingly, RCN wholeheartedly endorses ALTS' call for "minimum requirements for loop provisioning as a matter of federal law."[2]

RCN applauds the Commission's efforts to ensure UNE loops are available to CLECs pursuant to Section 251 of the 1996 Act. However, as ALTS emphasizes in its petition, CLECs continue to experience continual and unnecessary delays in obtaining UNE loops. These delays pose significant market entry barriers for CLECs. Thus, RCN urges the Commission to seize the opportunity to impose requirements on ILECs' provisioning of UNE loops in order to prevent unnecessary and lengthy delays. In so doing, the Commission will ensure that the pro-competitive, non-discriminatory goals of the 1996 Act are met.

Accordingly, in these Comments RCN recommends that the Commission (1) require ILECS to provision UNEs contemporaneous with provisioning collocation; (2) establish rules governing escalation of unresolved maintenance and repair problems; (3) require timely provision of loops and loop information; and (4) establish federal penalties for ILEC noncompliance.

---

2 *ALTS Petition*, p. 20.

II. THE COMMISSION SHOULD REQUIRE ILECS TO PROVISION UNES CONTEMPORANEOUS WITH PROVISIONING COLLOCATION

In its Petition, ALTS notes that one of the most severe obstacles to CLECs obtaining loops in a timely manner is the ILEC ordering process, which prohibits CLECs from ordering loops until collocation has been completed.[3] ALTS, therefore, seeks a Commission ruling making clear that CLECs may order and obtain loops and transport in a manner that will enable them to provide service at the time that collocated space is available.[4]

In the *Collocation Order*, the Commission recognized the significant competitive harm suffered by CLECs whose collocation space is not ready for as long as 6 to 8 months after their initial collocation request is submitted to an ILEC.[5] Likewise, there is significant competitive harm suffered by CLECs when they finally complete collocation and then experience delays in obtaining UNEs. For instance, as noted by ALTS, ILEC literature indicates that the guideline for provisioning DS-1 loops is 45 days.[6] Therefore, collocation provisioning and UNE provisioning can take up to 10 months. Also, RCN has experienced even further delays when an ILEC's database/system rejects its local service request (LSR). RCN urges the FCC to require an ILEC's database/system to be consistently updated in order to reflect circuits available for provisioning to prevent such unnecessary delays. Under the present conditions, it is virtually impossible for CLECs to rollout competitive services to consumers in a timely manner.

In the *Collocation Order*, the FCC concluded that ILECs cannot refuse to consider an application for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and ILEC have entered into a final

---

3 *ALTS Petition*, p. 9.

4 *Id.*

5 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), *recon pending* ("*Collocation Order*").

6 *ALTS Petition*, p. 9.

interconnection agreement.[7] Similarly, the FCC should conclude here that ILECs cannot refuse a competitor's order for UNEs before completion and turnover of collocation facilities. CLECs should be able to install equipment and obtain loops in the shortest timeframe possible with minimum downtime. Unnecessary delays substantially increase administrative and financial burdens on CLECs, who are forced to adjust internal provisioning plans and customer orders for service. Meanwhile, the ILECs are able to plan and rollout services in the same markets without incurring the same delays. Such a result is contrary to the pro-competitive, non-discriminatory goals of the 1996 Act. Accordingly, the FCC should permit CLECs to order collocation and UNEs at the same time and require ILECs to install and provide them at the same time. This practice should be implemented even if the FCC establishes specific intervals within which ILECs must provide collocation.[8]

III. THE COMMISSION SHOULD ESTABLISH RULES GOVERNING ESCALATION OF UNRESOLVED MAINTENANCE AND REPAIR PROBLEMS

The Commission has noted that "[a] competing carrier that provides services through resale or unbundled network elements remains dependent upon the ILEC for maintenance and repair."[9] Unfortunately, timely and successful repair of UNEs oftentimes does not occur, which impairs the ability of a requesting carrier to provide the services it seeks to offer in the local telecommunications market. Accordingly, the Commission should establish repair performance metrics and escalation procedures. It is important that these rules function automatically

---

7 *Collocation Order*, ¶ 53.

8 In the *Collocation Order*, the FCC did not adopt specific provisioning intervals, but stated that it retained the authority to do so in the future as it deems necessary. *Collocation Order*, ¶ 54. The FCC is considering requests for establishment of collocation intervals raised in petitions for reconsideration of the *Collocation Order*.

9 *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (December 22, 1999) at ¶ 212 ("*BANY Order*").

without imposing administrative and regulatory burdens on competitors.[10] Specifically, RCN proposes that the Commission adopt the following rules:

- If trouble occurs within network elements provided by the ILEC, the CLEC will first determine whether the trouble is in the CLEC's own equipment and/or facilities or those of the End User. If the CLEC determines the trouble is in the ILEC's equipment and/or facilities, the CLEC will issue a trouble report to the ILEC via the ILEC's electronic interface.

- If the ILEC trouble ticket remains open after 4 hours, the ILEC will proactively escalate the trouble ticket to a first line supervisor. Such supervisor will provide the CLEC with an Action Plan to resolve the trouble within the next 4 hours.

- If a trouble ticket remains open after 8 hours, the ILEC will proactively escalate the trouble ticket to the Manager level. Such Manager will update the CLEC within 12 hours after the trouble ticket is opened with an action plan to resolve the trouble.

- If a trouble ticket remains open after 12 hours, the ILEC will proactively escalate the trouble ticket to the Director level. Such Director will update the CLEC within 16 hours after the trouble ticket is opened with an action plan to resolve the trouble. At this time, the CLEC may request hourly updates from the ILEC. This will allow the CLEC the ability to better address its end user concerns.

- If a trouble ticket remains open after 24 hours, the ILEC will proactively update the trouble ticket to the Vice President level. Such Vice President will update the CLEC and agree to a same day vendor meet at location(s) necessary to resolve the trouble within 8 business hours.

- All trouble tickets will remain open until the ILEC, through the same electronic interface used to submit the trouble ticket, notifies the CLEC that the trouble ticket has been resolved, and the CLEC within 12 hours confirms resolution or denies resolution. If the CLEC denies resolution, the ILEC will continue resolution of the original ticket; the ILEC will be prohibited from requiring the CLEC to open a new trouble ticket in such instances.

Establishment of these federal rules for resolution of maintenance and repair issues will further the goals of the Act, promote the rapid development of competition and bring the benefits of competition to the greatest number of consumers.

---

10 The Commission made this very point in the *BANY Order* when discussing the performance assurance plans adopted by the New York Commission. *See BANY Order*, ¶ 12.

IV. THE COMMISSION SHOULD REQUIRE TIMELY PROVISION OF LOOPS AND LOOP INFORMATION

In its Petition, ALTS notes that the Commission's existing rules establish a sound legal basis for requiring ILECs to provide CLECs with loops capable of supporting voice and other services, but has yet to establish rules regarding the timeliness or efficiency with which loops and loop information must be provided.[11] ALTS, therefore, urges the Commission to issue a declaratory ruling to implement the policies by setting minimum requirements for loop provisioning as a matter of federal law.[12] RCN fully supports this request and urges the FCC to adopt standards for each stage of loop provisioning.

The Commission should examine issues pertaining not only to the ordering and delivery of the loop, but the pre-ordering and post-delivery stages as well. Luckily, as ALTS has pointed out, the Commission does not need to start from scratch in developing these standards.[13] For example, standards have been established in the context of consideration of regional Bell Operating Companies applications for Section 271 authority to provide in-region, interLATA

---

11 *ALTS Petition*, p. 20.

12 *ALTS Petition,* p. 21. Standards have been established in the context of consideration of regional Bell Operating Companies applications for Section 271 authority to provide in-region, interLATA authority. In addition, the Section 271 applicants, CLECs, and other interested parties have provided worthwhile suggestions in their comments on the various applications. *Id.*

13 *ALTS Petition*, p. 20.

service. These standards have emanated from not only this Commission, but also from the evaluation of these applications by state public utility commissions and the United States Department of Justice. In addition, the Section 271 applicants, CLECs, and other interested parties have provided worthwhile suggestions in their comments on the various applications. This Commission's task is to reevaluate these various approaches and formulate them into viable and authoritative standards that give effect to the provisioning of unbundled loops. RCN suggests the following standards, which the Commission can use as a starting point for its analysis. Through its proposed standards, however, RCN is not foreclosing any more stringent performance measures which the Commission may deem necessary to adopt.

A. Pre-Ordering

As noted by ALTS, ILECs oftentimes provide better service to themselves than to CLECS because they want to, and because they can.[14] Such behavior violates the pro-competitive, non-discriminatory goals encapsulated in the 1996 Act, and provides ample reason to establish minimum guidelines for ILECs regarding pre-ordering. RCN suggests the following:

- **Adopt a General Standard:** RCN believes that the Commission can adopt a general standard by looking to standards it has applied to the pre-ordering stage in the context of its Section 271 evaluations. In this context, the standard has been that since most pre-ordering functions that support service through unbundled network elements are analogous to the pre-ordering of a BOC's retail services, the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."[15] For those pre-ordering functions that lack a retail analogue, the BOC "must provide access that affords an efficient competitor a meaningful opportunity to compete."[16]

---

14 *ALTS Petition* , p. 24.

15 *BANY Order,* ¶129.

16 *Id.*

- **Adopt a Standard for Application to Application Interface – Proposed Standard: Parsed Customer Service Records (CSRs) provided in parity plus 10 seconds.** The Commission has previously emphasized that "providing pre- ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."[17] It is not enough, however, that the CLEC has access to the same information as the BOC, but that the CLEC also has the ability to retrieve this information and process the information at parity with the BOC's retail services. RCN, therefore, urges the Commission to require ILECs to provide pre-ordering information in a parsed format,[18] a format that would allow the CLEC to be automatically populated into EDI ordering fields.[19]

- **Adopt Standards Regarding Loop Make-up Information – Proposed Standards: Mechanized Loop Qualification – Parity with retail plus 4 seconds. Manual Loop Qualification – 95% of requests completed within 72 hours.** As noted by ALTS, CLECs need access to detailed information about available loops including the length of the loop and the presence of bridged taps, load coils, and digital loop carrier equipment.[20] The Commission should look to The New York PSC, who has set two performance measures. The first, PO-1-06, tracks average response time for mechanized loop qualification, with the standard being parity with retail but not more than 4 seconds.[21] PO-8-01 tracks the average response time for manual loop qualification, and the standard is 95% completed within 72 hours.[22]

---

17 *Id.*

18 Parsed formats provide a readable format to the data by placing lines and spaces within the text. Many BOC ordering systems require CLECs to enter data in a parsed format.

19 *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In- Region InterLATA Services in Texas,* CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000)("*AT&T SBC 271 Comments*"); MCI WorldCom Comments at 9 (April 26, 2000)("*WorldCom SBC 271 Comments*").

20 *ALTS Petition*, p. 23.

21 *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, Case 97-C-0139 (NY PSC Feb. 16, 2000), p. 19 (*NYPSC Order #2*).

22 *Id.*

B. Ordering

This Commission has previously focused on flow-through rates as an indicia of parity in the ordering stage.[23] As ILEC ordering systems become more mechanized, flow- through rates have ceased to be the prime area of inquiry. Instead, this Commission has focused on an ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems."[24] Data from the SBC 271 application for Texas suggest, however, that flow-through may still be a big problem. Sprint pointed out that reject rates for orders sent over the SBC's electronic interfaces have reached a percentage plateau in the mid-20s.[25] Sprint has demonstrated that SBC cannot palm these errors off as CLEC-caused.[26] Sprint also demonstrated that there is not a wide range of flow-through rates as in New York that would suggest that flow-through problems may be due to variations in CLEC care in submitting orders.[27] RCN suggests the following:

- **Adopt a Standard Regarding Order Rejects – Proposed Standards: Return of 95% of mechanized order confirmation and rejection notices within 2 hours of submission to BOC, and 95% of manually processed order confirmation and rejection notices under 10 lines within 24 hours of submission.**[28] Given the prevalence of high rejection rates and low flow-through rates, the timing of the delivery of rejection notices becomes all the more critical. Strict timing metrics

---

23 "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. *BANY Order* at ¶ 160, fn. 488. The flow-through rate often "serves as a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commercial volumes of orders." *Id.* at ¶ 162, fn. 496.

24 *Id.* at ¶ 163.

25 CC Docket No. 00-65, April 26, 2000 Petition to Deny of Sprint Communications Company, L.P. at p. 39 (*Sprint SBC 271 Comments*).

26 *Id.* at p. 40.

27 *Id.* at 41.

28 For xDSL services, the applicable timeframe is 72 hours.

coupled with enforcement mechanisms will provide ILECs the incentive to process fully electronic rejects.[29]

- **Adopt a Standard Regarding Jeopardy Notices – Proposed Standards: Timeliness of notice of jeopardy of service order request where miss is known in advance of due date (missed commitment with new date/time). 100% within 24 hours before due date with facilities. 100% within 48 hours before due date without facilities.** Jeopardy notices involve notification by the BOC to the CLEC that a service installation or repair due date will be missed. The importance of jeopardy notices cannot be overstated because a missed service installation date will literally place an order in "jeopardy" for the CLEC.[30] BOCs should be required to provide jeopardy notices and to provide notices in a timely manner that will allow the CLEC to notify the end user well in advance that a due date may be missed. A separate performance metric should be created for delivery of jeopardy notices. A possible standard is the "Due Date Minus Two" procedure Bell Atlantic applies to provide jeopardy notices in regard to hot cuts. Under the procedure, Bell Atlantic is required to check for a competing carrier's dial tone two days before a hot cut date and promptly notify the carrier if there is a problem.[31] This procedure, in the words of the NY PSC, "allows the [competitive LEC] the opportunity to notify its customer of potential delay and, if necessary, postpone the due date."[32] The Commission commended Bell Atlantic for developing this jeopardy process for hot cuts and found "that it appears to be critical to the proper functioning of the hot cut process."[33] There is no reason why BOCs should not implement a similar jeopardy process for non-hot cut orders, especially since such a process is equally critical for those orders.

C. Provisioning

There are three ways that an ILEC can provision unbundled loops to the CLEC. First, when the BOC does not presently serve the customer on the lines in question, the CLEC may

---

29 For xDSL services, the applicable timeframe is 72 hours.

30 The Commission has heretofore declined to require a BOC to actively provide jeopardy notices, instead of merely providing access to such information. *See BANY Order*, ¶ 184. The Commission also rejected overtures that a BOC must be required to provide notices before the due date that it is going to miss a due date albeit recognizing that "a system designed to deliver jeopardy notification well in advance of missed appointments would lessen the impact of such misses." *Id.*, ¶ 185. RCN respectfully requests that the Commission reconsider its prior determinations on jeopardy notices.

31 *BANY Order*, ¶ 186.

32 *Id.*

33 *Id.*

obtain a "new" loop from the BOC. Second, the BOC may provision stand-alone loops to competing carriers through coordinated conversions of active loops to the carrier's collocation space. This process is known as a "hot cut." The third way is if the loop is provisioned as part of a platform of network elements.[34] RCN suggests the following:

- **Adopt Standards for Average Completion Intervals – Proposed Standards: ILEC must provision 95% of orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops).** In its Petition, ALTS proposes that the Commission adopt the above standards, as already in place by the Texas PUC, which has been cited with approval by the Commission.[35] RCN supports this proposal. The Commission has found that Average Installation Interval data is critical to determining if "a BOC provides equivalent access to OSS because such data are 'direct evidence of whether [a BOC] takes the same time to complete installations for competing carriers as it does for [itself], which is integral to the concept of equivalent access.'"[36]

- **Adopt Standards Regarding Hot Cuts – Proposed Standard: Proposed CLEC standard – 95% of orders of 10 loops or fewer to be completed within 1 hour.** It is critical that a hot cut is provisioned correctly with coordination between the BOC and the competing carrier because problems with the cutover could result in extended service disruptions for the customer.[37] For a competing carrier trying to convince a customer that its change from the incumbent to the competitor was the correct choice, it goes without saying that the shorter the service disruption the better.

---

34 *BANY Order*, ¶ 276.

35 *ALTS Petition*, p. 27.

36 *BANY Order*, ¶ 193. Also, intrinsically tied into the average provisioning interval is data as to missed due dates. In fact, the Commission has urged consideration of the average completion interval in context with missed due dates because in some circumstances the completion interval may not be, on its own, an accurate indicator of whether a BOC is providing loops in a timely manner. *Id.* at ¶ 289.

37 *Id.*

V. THE COMMISSION SHOULD ESTABLISH FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE

In its Petition, ALTS suggests that the Commission adopt federal penalties for ILEC failure to comply with the provisioning rules.[38] RCN agrees. ALTS suggests self-executing monetary penalties, and, in the context of a declaratory ruling, *prima facie* penalties that would apply by means of a rebuttable presumption in subsequent enforcement or remedial proceedings.[39] RCN further proposes that penalties could consist of the waiver of some, or all, non-recurring charges related to the provisioning of the collocation space and UNEs. Furthermore, the FCC could mandate a reduction in rates that an ILEC charges CLECs for UNEs. The penalties could be structured to increase in relation to the length of delay. In other words, the longer the delay, the greater the penalty. RCN believes that penalties are an efficient, effective and necessary measure.

The Commission should also make enforcement of contemporaneous provisioning a priority for the newly formed Enforcement Bureau. Complaints regarding compliance are suitable for review under the Commission's "Rocket Docket" procedures. The Commission should allocate sufficient resources to permit the timely review of provisioning complaints. Adopting a policy of enforcing contemporaneous collocation and UNE provisioning will help ensure that ILECs are provisioning in a non-discriminatory, efficient manner. Alternatively, the Commission could permit states to enforce these penalties.

---

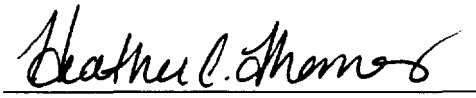
38 *ALTS Petition,* p. 31.

39 *Id.*

VI. CONCLUSION

Given the potential benefits that can be provided to American consumers if meaningful competition exists between ILECs and CLECs, the Commission should grant ALTS petition and clarify, interpret, and modify its rules governing crucial aspects of loop provisioning by ILECs. Such action will serve the public interest, resulting in overall telecommunications competition, which will further the goals of the 1996 Act. Accordingly, RNC urges the Commission to (1) require ILECS to provision UNEs contemporaneous with provisioning collocation; (2) establish rules governing escalation of unresolved maintenance and repair problems; (3) require timely provision of loops and loop information; and (4) establish federal penalties for ILEC noncompliance.

Respectfully submitted,



Russell M. Blau
Heather A. Thomas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for RCN Telecom Services, Inc.

Dated: June 23, 2000

#337922